Federal Court (comprising of Wee Chong Jin, C.J. (Singapore), Wylie, C.J. (Borneo) and Tan Ah Tah F.J.), after reviewing a long line of cases, was in entire agreement with the judgment of Murray-Aynsley C.J. in *Er Gek Cheng's case.*

Counsel for the Appellant says that any holding out of the Respondent as a wife was after 1968, and that was after the coming into force of the Women's Charter by which no marriage is valid unless registered. Counsel submits that after 1967 (when the Women's Charter was amended) the concept of presumption of marriage by an intention to form a permanent union, by repute, or by long cohabitation, has been done away with. I see no substance in this submission.

As to the law, the Magistrate has, in my opinion, correctly stated the principles to be applied to the case. With regard to the facts there was ample evidence on which the Magistrate could reach the conclusions which he did that the Respondent and the Appellant had gone through a ceremony of marriage, that they had lived openly as husband and wife and that they intended to form a permanent union as husband and wife and that there is a valid marriage existing between them.

The Appellant contended before the Magistrate that, if the Respondent was his wife, he was not liable to maintain her because she had left the matrimonial home unjustifiably. The Magistrate after having considered the evidence was satisfied that the Respondent was justified in leaving the matrimonial home. The Appellant submits that the Magistrate has erred in this finding.

The Magistrate said in his Grounds of Judgment:

"In fact it would not be unfair to say that she was forced to leave by the Respondent's (Appellant's) acts and conduct. She did not refuse to reside in the matrimonial home. The Respondent (Appellant) had made life at home intolerable for her to stay. Though this is not a charge of cruelty under section 62 (1) of the Women's Charter, chaper 47, however the evidence showed that the acts and conduct of the Respondent (Appellant) had been such a character that she was reasonably justified in continuing to live apart from the Respondent (Appellant)."

The Appellant did not give any evidence. The Magistrate had considered carefully the evidence that was adduced before him. The Appellant has not persuaded me that the Magistrate was wrong in his decision that the Respondent was justified in leaving the matrimonial home.

The Appellant complains that the Magistrate was wrong in awarding the sum of $1500 per month maintenance to the Respondent. The Appellant says that the Magistrate had acted on very flimsy evidence and that the Magistrate failed to consider or sufficiently consider the fact that the Respondent was exaggerating her figures of expenditure. There is no substance in this complaint. The Appellant did not give any evidence as to his means. He should have if he thought that the demand of the Respondent was excessive. I see no good reason to interfere with the decision of the Magistrate.

In the result the appeal of the Appellant is dismissed with costs.

I now come to deal with the appeal of the Respondent (District Court Appeal No. 3 of 1979).

The Respondent says that the Magistrate, having decided that the Respondent had justifiably left the matrimonial home on May 27, 1977, erred when he ordered the payment of the maintenance to commence on April 1, 1978. The Respondent submits that the payment should commence on May 27, 1977. The Respondent says that the order has deprived her the right of maintenance for herself and to reinbursement of maintenance she had to incur for the maintenance of her daughter Lena Ching for the period May 27, 1977, to April 1, 1978, when she and her daughter were not provided with maintenance by the Appellant.

The Magistrate has not given any reason why he ordered the maintenance to commence from April 1, 1978. The Maintenance Summons was taken out on July 26, 1977. Hearing commenced on November 28, 1977. The case lasted thirteen days and was concluded on April 28, 1978. It was strenuously resisted by the Appellant. It seems to me unreasonable that maintenance should commence some ten months after the Appellant ceased to maintain the Respondent and her daughter when the Respondent took immediate steps to apply for maintenance.

The appeal of the Respondent is allowed with costs. I order that the maintenance for the Respondent and her daughter commence from June 1, 1977.

Appellant's Appeal Dismissed.
Respondent's Appeal Allowed.

Solicitors: *Loh Lin Kok; Charles N. Mendis.*

TAN KENG KOH v. CHAN KAI KAH & ANOR.

[A.C.J. (Rajah J.) March 5, 1982]
[Singapore – District Court Appeal No. 17 of 1981]

Landlord & Tenant – Claim for possession of premises – Whether rent-controlled – Burden on landlord to prove premises not rent-controlled – Control of Rent Act (Cap. 266).

The plaintiffs/respondents purchased the land and premises at No. 215-D Balestier Road. They claimed for possession of the said premises from the defendant. The defendant relied on the provisions of the Control of Rent Act (Cap. 266) and claimed protection under it. The learned trial judge gave judgment for the plaintiffs. The defendant appealed.

Held, allowing the appeal: the learned trial judge had not addressed his mind to the question of proof in such proceedings being on the plaintiffs (landlords) and not on the defendant (tenant).

Editorial Note: The plaintiffs have appealed against the above judgment.

Case referred to:
(1) *Dadhi Ral Yado* v. *Mukat Rai* [1958] M.L.J. 193.

DISTRICT COURT APPEAL.

Mohan Bachoo Singh for the appellant/defendant.
Ng Wing Cheong for the respondents/plaintiffs.

Cur. Adv. Vult.

Rajah J.: The Plaintiffs in District Court Summons No. 1933 of 1980, who are the Respondents in this appeal,

purchased the land and premises known as Lot 104 of Town Subdivision XXIX on September 30, 1969 together with the premises known as No. 215-D Balestier Road erected thereon. They commenced proceedings for possession of the said premises against the Defendant, the Appellant herein. In paragraph 5 of the Statement of Claim they pleaded that "the Plaintiffs are not precluded by the Control of Rent Act, Chapter 266 (the Act) from recovering possession of the said premises, the same not being within the purview of the said Act". In paragraph 7 of the Defence the Defendant claimed that the said premises were within the purview of the Act and claimed protection under it. In his Grounds of Decision, the learned trial judge stated, "The defendant's sole defence at the trial was that he was entitled to protection under the Control of Rent Act, Cap. 226, having occupied the premises prior to September 1947. All other defences pleaded by him in his Defence were abandoned."

The learned trial judge gave judgment for the Plaintiffs for possession of the said premises. Against this judgment the Defendant appealed to the High Court and one of his grounds of appeal was that, "The Learned District Judge was wrong in law and in fact in failing to consider that on the evidence adduced by the Plaintiffs, the Plaintiffs had not discharged the burden of proof, the onus of which was on the Plaintiffs to prove that the premises were not subject to the Control of Rent Act, and deciding the case on the basis that the burden of proving that the premises were within the Control of Rent Act was on the Defendant/Appellant". At the end of the hearing of the appeal I allowed the appeal with costs here and below. The Plaintiffs (Respondents) are now appealing against my judgment.

Now, it is well settled law that in proceedings for possession of premises it is for the Plaintiff (landlord), and not for the Defendant (tenant), to prove that the premises in respect of which possession is being sought is outside the protection of the Act, see *Dadhi Ral Yado* v. *Mukat Rai*[1]. The Plaintiffs in the District Court called three other witnesses beside the 1st Plaintiff himself. The first witness was a clerical officer from the Property Tax Department who said that the premises were first assessed to property tax on January 1, 1958 on an application "for a house number plate for a house near to 215 Balestier Road. The reason given was that his family had great difficulty in applying for water and he intended to apply for separate water supply" (Page 18 of Record of Appeal). The second witness, a senior clerk from the Public Utilities Board, said that "According to records, the water account was operated before May 27, 1958. Electricity was applied for on May 27, 1958. It is a non-domestic commercial account" (Page 19 of Record of Appeal). The third witness, a clerical officer from the National Registration Office, gave evidence that "the identity card No. 0404775/C's holder is Tan Keng Koh (the Defendant-tenant). From records the first address recorded on October 31, 1948 is 256E Changi Road 6¾ m.s. On January 10, 1953 it was changed to 265 Changi Road. On February 7, 1958 it was changed to 215D Balestier Road" (Page 20 of Record of Appeal). The 1st Plaintiff's evidence was "I do not know when 215D Balestier Road was erected" (Page 21 of Record of Appeal). From the evidence of all these four witnesses it seems clear to me that the Plaintiffs had not discharged their burden of proof.

It is quite apparent from a reading of the judgment of the learned trial judge that he approached the whole case as if the burden of proof was on the Defendant and not on the Plaintiffs. His whole judgment deals with the evidence adduced by the Defendant. Nowhere does he say anything about the evidence led by the Plaintiffs in the case before him.

I allowed the appeal for the reason that the learned trial judge had not addressed his mind to the question of the burden of proof in such proceedings being on the Plaintiffs (landlords) and not on the Defendant (tenant).

Appeal allowed.

Solicitors: *B. Mohan Singh & Co.; Ng, Wong & Cheong.*

TEO EE HUP v. SYED HUSSAIN BIN ABDUL RAHMAN ALKAFF

[A.C.J. (Rajah J.) March 10, 1982]
[Singapore – District Court Appeal No. 27 of 1980]

Landlord & Tenant – Claim by landlords for possession – Landlords themselves in breach of provisions of Control of Rent Act – Court's refusal to give redress – Control of Rent Act (Cap. 266), ss. 3, 5 & 15(1)(g).

Landlord & Tenant – Rent-controlled premises – Claim for possession – Mohamedan Calendar and Gregorian Calendar distinguished.

The plaintiffs/respondents sought to recover possession of No. 191 Beach Road, a rent-controlled premises from the first defendant. They argued that he was in breach of a condition of his tenancy not to sublet which he did to four other defendants. Alternatively, the first defendant was collecting rents from his sub-tenants in excess of the permitted margin.

The facts revealed that in Rent Board Application No. 33 of 1974 the rent of the premises was increased from $224.40 to $278.60 per month. This entailed the serving of a Notice to Quit dated December 20, 1973 (the First Notice). The permitted rent increase was according to Gregorian Calendar whereas the rent actually collected by the plaintiffs from the first defendant as from the date of permitted increase was in accordance with the Agreement based on the Mohamedan Year which has one more month than the Gregorian Year.

The plaintiffs, having learnt that the first defendant had sublet parts of the premises, served a Notice to Quit dated July 28, 1977 (the Second Notice) on the first defendant.

The issues before the trial judge were:

(a) whether the four sub-tenants, had already been on the premises before the date of the Agreement, namely, January 29, 1966;
(b) whether there had been any sub-letting subsequent to the Agreement by the first defendant in breach of clause (b) of the Agreement;
(c) whether the total rent collected by the first defendant from the sub-tenants was in excess of the permitted amount; and
(d) whether the Second Notice in all the circumstances of the case was a valid one.

The learned trial judge found, *inter alia*, that there had been a breach of clause (b) of the said Agreement, which would entitle the plaintiffs under the Agreement to terminate the tenancy and re-enter the premises. On issue (d) he found the Second Notice to be a valid one. The first defendant appealed.

Held, allowing the defendant's appeal: (1) it is not permissible for a landlord, who has obtained from the Rent Conciliation Board a fixed monthly increase based on the Gregorian Calendar in respect